



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 7, 2003

Mr. Gordon Bowman
Assistant City Attorney
County of Travis
P. O. Box 1748
Austin, Texas 78767

OR2003-0827

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176278.

The Travis County Attorney (the "county attorney") received a written request for all documents pertaining to a criminal prosecution. You state that most of the requested information has been released to the requestor. You contend, however, that certain other documents coming within the scope of the request, a representative sample of which you submitted to this office, are excepted from required disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code.¹

You first contend that the documents you submitted to this office under Tab A constitute prosecutorial work product that is excepted from public disclosure pursuant to section 552.108(a)(4) of the Government Code, which provides that information is excepted from public disclosure if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) information that reflects the mental impressions or legal reasoning of an attorney representing the state. After reviewing your arguments and the submitted documents, we agree that the county attorney may withhold the information submitted under Tab A in its entirety pursuant to section 552.108(a)(4) of the Government Code.

You next contend that the documents you submitted under Tabs B and C constitute confidential criminal history record information ("CHRI"). Section 552.101 of the Government Code excepts from required public disclosure "information considered to be

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

confidential by law, either constitutional, statutory, or by judicial decision.” The information you submitted under Tabs B and C consists of CHRI obtained from both the National Crime Information Center (“NCIC”) and the Texas Crime Information Center (“TCIC”). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. However, driving records are not criminal history record information. Gov’t Code § 411.082(2)(B). Consequently, although the county attorney must withhold all CHRI obtained from the TCIC and NCIC, the county attorney must release the individual’s driving record information to the requestor.²

Finally, we address the applicability of section 552.130 of the Government Code. Section 552.130(a)(1) of the Government Code requires the county attorney to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, the county attorney must withhold all Texas driver’s license numbers pursuant to section 552.130(a)(1) of the Government Code. Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to “a motor vehicle title or registration issued by an agency of this state.” Consequently, the county attorney must withhold all Texas license plate numbers contained in the records at issue pursuant to section 552.130(a)(2).

In summary, the county attorney may withhold all of the documents submitted under Tab A pursuant to section 552.108(a)(4). The county attorney must also withhold all of the CHRI submitted under Tabs B and C, but the driving record information must be released. Finally, the county attorney must withhold all Texas driver’s license numbers and Texas license plate numbers pursuant to section 552.130. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

²Because we resolve this aspect of your request under chapter 411 of the Government Code, we need not address your other arguments for withholding other specific information contained therein.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

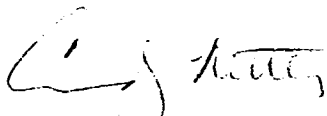
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/lmt

Ref: ID# 176278

Enc: Submitted documents

c: Mr. Craig Lovell
8813-B Taylor Road
Austin, Texas 78733
(w/o enclosures)